**IN THE UNITED STATES COURT OF APPEALS**
**FOR THE FOURTH CIRCUIT**

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, a project of the Urban Justice Center, Inc., on behalf of itself; HIAS, INC., on behalf of itself and its clients; MIDDLE EAST STUDIES ASSOCIATION OF NORTH AMERICA, INC., on behalf of itself and its members; MUHAMMED METEAB; PAUL HARRISON; IBRAHIM AHMED MOHOMED; JOHN DOES #1 & 3; JANE DOE #2,

Plaintiffs-Appellees,

v.

No. 17-1351

DONALD J. TRUMP, in his official capacity as President of the United States; DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF STATE; OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE; JOHN F. KELLY, in his official capacity as Secretary of Homeland Security; REX W. TILLERSON, in his official Capacity as Secretary of State; DANIEL R. COATS, in his official capacity as Director of National Intelligence,

Defendants-Appellants.

**DEFENDANTS-APPELLANTS' RESPONSE TO PLAINTIFFS-APPELLEES' MOTION FOR LEAVE TO SUPPLEMENT THE RECORD**

Defendants-appellants Donald J. Trump *et al.* (collectively, the government) submit this response to plaintiffs-appellees' motion for leave to supplement the record.

Defendants consented to plaintiffs' request to file a declaration with the Court explaining that John Doe #3's wife was granted an immigrant visa on May 1, 2017. That new information bears directly on this Court's Article III jurisdiction over his claim. Now that Doe #3's wife has a valid visa, she can travel to the United States. Doe #3 accordingly has no need for a judicial remedy, and his claim is moot.

Plaintiffs state in their motion, however, that "[i]f the injunctions of Section 2(c) were lifted, Doe #3's wife, who is Iranian, would immediately be banned from entering the United States." That statement is incorrect. Under Section 3(a), "the suspension of entry pursuant to [S]ection 2 of this order shall apply only to foreign nationals of the designated countries who: (i) are outside the United States on the effective date of this order; (ii) did not have a valid visa at 5:00 p.m., eastern standard time on January 27, 2017; and (iii) do not have a valid visa on the effective date of this order." The third clause is the one at issue here. The Order was scheduled to become effective at 12:01 a.m., eastern daylight time on March 16, 2017. Order § 14. The suspension of entry thus would have applied to foreign nationals of the designated countries who did not have a valid visa as of March 16.

But as the Court is aware, Section 2(c) was not permitted to take effect at 12:01 a.m. on March 16 because it was enjoined nationwide prior to that deadline. Accordingly, it does not make sense to treat March 16 as the "effective date" for purposes of Section 2(c). Whether because Section 2(c) was never permitted to take effect on that date, or because the "effective date" for Section 2(c) has been tolled during the pendency of the injunctions, or because those injunctions prevented Section 14's effective date from applying to Sections 2 and 3 (and those applications are severable under the express severability clause in Section 15), the Order's 90-day suspension will begin when the injunctions are lifted—and anyone with a valid visa as of that date will not be subject to the suspension. Plaintiffs' interpretation would defeat the President's clear purpose to permit travel by anyone with a valid visa when the 90-day suspension commenced, and is inconsistent with the Executive Branch's definitive interpretation of Section 3(a)(iii). Because Doe 3's wife apparently has received a valid visa before Section 2(c) is permitted to take effect, she will not be prevented by the Order from entering the United States and Doe 3's claim is moot.

Moreover, even under plaintiffs' misreading of the Order, Doe #3's wife still would be unable to show irreparable injury that would warrant leaving the stay in place. Her visa would enable her to travel to the United States and seek admission. Under Section 3(c), once Doe #3's wife presented herself at a port of entry, an appropriate U.S. Customs and Border Protection official could grant her a waiver from Section 2(c)'s suspension of entry. *See* Order § 3(c) (authorizing "a consular officer, or, as appropriate, the Commissioner, U.S. Customs and Border Protection (CBP), or the Commissioner's delegee" to grant case-by-case waivers). Given that Doe #3's wife falls within one of the enumerated categories of individuals for whom waivers could be appropriate, there is every reason to anticipate that a waiver would be granted. Unless and until Doe #3's wife seeks and is denied a waiver, any claim by Doe #3 is unripe.

Respectfully submitted,

/s/ Sharon Swingle
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MAY 2017

## CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2017, I electronically filed the foregoing response with the Clerk of the Court by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Sharon Swingle
Sharon Swingle

## CERTIFICATE OF COMPLIANCE

I hereby certify that this response complies with the word count and typeface requirements set forth in Federal Rule of Appellate Procedure 27. The response contains 618 words and is prepared in Times New Roman font, 14-point type.

/s/ Sharon Swingle
Sharon Swingle